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MEMORANDUM FOR: General Counsel

FROM: Harry E. Fitzwater
Deputy Director for AdministrationSUBJECT: Revision of Executive Order 12065, "National
Security Information"REFERENCE: Multiple addressee memorandum from OGC dated
13 August 1981; Same Subject (OGC 81-06910)

INDIA DEPARTMENT

FILE: Legal

Below are our comments on the final draft of the revision of Executive Order 12065, as telephoned to Steve Hermes on 17 August 1981:

a. Page 1, Section 1-101

In line 6, change "at an appropriate level of classification" to "at the higher level".

b. Page 6, Section 1-301(k)

Change "section 6-105" to "Section 6-106".

c. Page 8, Section 1-402

The present wording would cause difficulties for the agencies that may want to exclude certain information from the prohibition on automatic declassification. The systematic review procedures apply (correctly) to permanent information only. Therefore, no temporary information (which constitutes the bulk of an agency's holdings) could be approved for automatic declassification. Suggest using the wording OIS originally provided:

1-402 Information subject to automatic declassification pursuant to limitations on duration of classification specified in predecessor orders shall not be automatically declassified, but shall be reviewed to determine if national security considerations require continued classification. Agency heads designated pursuant to Section 1-2 and the heads of Agencies which had original classification authority under predecessor orders may exempt specific categories of information under their jurisdiction from this review requirement.

d. Page 12, Section 3-102

Delete the first sentence (this was the intent of the 26 June 1981 OIS comment from which the other two sentences came). The final sentence covers the designation of officials where appropriate.

e. Page 13, Section 3-102

Change "Section 5-401(a)" to "Section 5-301(a)."

f. Page 15, Section 3-402

Abbreviate the first sentence: "Information less than 10 years old is exempted from the provisions of Section 3-401." We understand there are two main reasons for not restricting mandatory review to information 10 or more years old. First, that doing so would tend to obstruct legitimate historical researchers. Second, that we should leave an alternate access route open in order to facilitate FOIA relief. Regarding the first reason, we have found that legitimate historical researchers tend to be interested primarily in older information. Regarding the second reason, given the dubious chance of FOIA relief, we think it would be preferable to ease this provision when and if the need arises, rather than giving it up now merely in the prospect that doing so might possibly be useful in the future.

g. Page 16, Section 3-404(a)

Delete the "3-404."

h. Page 17, Section 3-404(b)

In the fifth and sixth lines, change "requestor" to "requester".

i. Concerning the role of the Information Security Oversight Office (ISOO), we note that there are specific authorities in Sections 1-205, 1-301(1), 3-203, 3-301, and 3-404. Some of these may not be consistent with the ISOO charter in Sections 5-1 and 5-2. We suggest that either the specific authorities be deleted or the charter expanded as appropriate.

Harry E. Fitzwater

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DDA/OIS/RMD/H pr (18 August 1981)

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